IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRP.No. 1452 of 2002()

I.A.No.652/02 IN OP.3/2002 of MUNSIFF COURT, OTTAPPALAM
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REVN. PETITIONER: RESPONDENT/PETITIONER:

JANAKI, D/O. VATTANKANDATHIL RAMAN, NELLAYA AMSOM DESOM, OTTAPALAM TALUK.

BY ADV. SRI.P.G.PARAMESWARA PANICKER
SRI.SANTHEEP ANKARATH

RESPONDENTS: PETITIONER/RESPONDENT:

GOPALAN (DEAF AND DUMB), S/O. PULASSERIKUNNATH RAMAN, CHERPULASSERY AMSOM DESOM, OTTAPALAM TALUK, BY NEXT KIN WIFE KALYANIKUTTY.

BY ADV. SRI.JIJO THOMAS
SRI.SHERIF.P.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.3646/02 IN C.R.P.NO.1452/02

DISMISSED

06/07/2007 **Sd/-, PIUS.C.KURIAKOSE, JUDGE**

/True Copy/

PA to Judge

PIUS.C.KURIAKOSE, J.

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C.R.P.No.1452 OF 2002

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Dated this the 6th day of July, 2007

ORDER

The respondent in an application under Order XXXII Rule 3 of the Civil Procedure Code seeking appointment of a guardian is aggrieved by the order of the learned Munsiff allowing the application filed by one Kalyanikutty, who was the wife of Sri.Gopalan, a deaf and dumb person who was arrayed as the defendant/respondent in the suit which was filed by the petitioner, an informa pauperis. In the civil revision petition, Gopalan represented by next kin wife Kalyanikutty is the respondent and for the sake of convenience I will be referring to Smt.Kalyanikutty as the petitioner in I.A.No.652/02 in O.P.No.3/02.

2. The suit was instituted by the petitioner herein as an indigent person claiming maintenance from her husband Gopalan. According to the petitioner she is the lawfully wedded wife of Gopalan. Gopalan is a deaf and dumb person, he is a drunkard and he got acquainted with Smt.Kalyanikutty, the petitioner in the I.A. Since then

the plaintiff was being treated with atmost cruelty. The plaintiff was driven away from the house and is not being looked after by her husband who is bound to look after her. Hence the suit for maintenance which was filed as an indigent person since the petitioner has no means to pay the court fee. Smt.Kalyanikutty filed the I.A. stating that she is the wife of Gopalan and as the Gopalan is deaf and dumb, she is to be appointed as guardian for defending the case. To the I.A., the petitioner has filed counter contending that the I.A. is not maintainable since Order 32 is not applicable in the case of deaf and dumb persons. It was also contended that Kalyanikutty was not lawful wife of Gopalan and hence she is not entitled to file such an application. The court below under the impugned order allowed the application and appointed Smt.Kalyanikutty as the guardian of respondent Gopalan.

3. I have heard the submissions of Sri.P.G.Parameswara Panicker, senior counsel and Sri.Jijo Thomas, learned counsel for the respondent. Sri.Parameswara Panicker would assail the impugned order and argue that Order 32 of CPC deals with appointment of guardian in the case of minors and persons of unsound minds only.

Rule 15 of that order empowers the court to appoint guardian in the case of persons suffering from mental infirmity. Deafness and dumbness are not akin to unsound mind and minority. Minor and a person of unsound mind will not be able to understand the consequences of his actions. But in the case of deaf and dumb there is no such problem. They will know the pros and cons of their conduct. Their only infirmity is in the matter of communication, More over they do not require guardian. They can get the assistance of persons through whom they can communicate their ideas.

Sri.Jijo Thomas, learned counsel for the respondent however would support the impugned order. My attention was drawn by the learned counsel to the judgment of this court in **Pullikkal Kunhamma v. Pulikkal P.J.Rosakutty** (1996(2)KLT 644). He submitted that though Gopalan is referred to as deaf and dumb person only, the reality is that he is unable to comprehend the pros and cons of his action without the help of a guardian. He will not able to protect his interest in the suit. Since Kalyanikutty is admittedly the only woman in Gopalan's life now, she will be the most competent person to be

appointed as guardian. Even if the case does not come strictly under Order XXXII, this court's inherent powers under Section 151 are saved and those powers may be invoked for sustaining the impugned order, so submitted the learned counsel.

Having considered the rival submissions addressed at the Bar, I am of the view that the learned Munsiff was not justified in invoking the powers under Order XXXII and in allowing the application as prayed for appointing Smt.Kalyanikutty as guardian for Gopalan. At the same time, the submission of Sri.Jijo Thomas that Gopalan is incapable of protecting his interest in the subject matter of litigation without aid of a guardian cannot be ignored.

Having regard to the principles laid down by this court in Pullikkal Kunhamma v. Pulikkal P.J.Rosakutty (1996(2)KLT 644), I feel that this is a case where learned Munsiff should have directed appearance of Gopalan, the person concerned before the court below before passing orders. Accordingly, setting aside the order, I direct the court below to direct personal appearance of Gopalan before the court. Once Gopalan appears, the court below will put necessary questions to

Sri.Gopalan and if it is revealed in that enquiry that Gopalan is not capable of instructing his advocate properly, the court will appoint an advocate as guardian ad litem invoking the inherent powers of the court which are saved under Section 151 of the CPC.

CRP is allowed as above.

PIUS.C.KURIAKOSE
JUDGE

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